

SCANNED

DATE: 3/23/05

BY: *from*UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKETED

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FIRST, LLC, a Delaware Limited Liability Company,

Plaintiff,

v.

TIMOTHY MCARTHUR,

Defendant.

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XEX PARTE APPLICATION
FOR TEMPORARY
RESTRAINING ORDER AND
EXPEDITED DISCOVERY

Upon the Verified Complaint, this Ex Parte Motion and the attached Memorandum of Law, plaintiff FIRST, LLC ("FIRST") moves pursuant to Federal Rules of Civil Procedure Rules 4, 30(a), 34(b) and 65(b) that the Court issue a Temporary Restraining Order to prevent defendant Timothy McArthur ("McArthur") from publishing on the Internet copies of the highly confidential source code for FIRST's copyrighted computer game, NASCAR® Series 2003 Season ("NASCAR ® 2003") and to order McArthur to respond to one document request in order to present FIRST's preliminary injunction motion on a more fully developed record. In support of this application, FIRST relies on the Memorandum of Law submitted herewith and states as follows:

1. FIRST owns the registered copyrights in the NASCAR® 2003 computer software game, which was publicly distributed under an "End User License Agreement" that explicitly prohibits licensees from "reverse engineering" or otherwise attempting to obtain copies of NASCAR® 2003's human-readable source code. Nevertheless, by his own admission, McArthur willfully and knowingly violated the copyright laws (17 U.S.C. §101 et. seq.) and wrongfully converted NASCAR® 2003 by de-compiling and/or reverse engineering the software to create an application that automatically generates unlicensed derivative works of NASCAR® 2003, which application McArthur posted on his Internet website to be downloaded by "tens of thousands" of persons over Internet.

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After FIRST demanded that McArthur cease publication of his application and assign any interests in it to FIRST, McArthur became belligerent and, on March 19, 2005, threatened to publish over the Internet the NASCAR® 2003 object code or highly confidential source code, evidently under the misimpression that such publication would cause FIRST to lose its copyrights in the software.

2. FIRST seeks in this action, among other things, immediate injunctive relief ordering McArthur not to publish the NASCAR® 2003 source code object code or any derivative works thereof, and preliminary and permanent injunctive relief to prevent McArthur from distributing derivative versions of NASCAR® 2003.

WHEREFORE FIRST respectfully requests that this Court:

(1) issue a Temporary Restraining Order prohibiting McArthur from publishing NASCAR® 2003 computer software source code or object code and cease from further disseminating of any derivative versions thereof;

(2) grant FIRST leave to request that McArthur immediately produce the one class of documents as described in Plaintiffs' First Requests for Production of Documents attached as Exhibit A to the (Proposed) Order, submitted herewith;

(3) indefinitely preserve inviolate all source or object code and documents relating to NASCAR® 2003 as well as all records that reflect the identity or number of persons who have accessed any derivative versions of NASCAR® 2003 on McArthur's Internet website; and

(4) grant any other relief the Court deems just and proper.

ORAL ARGUMENT REQUESTED

FIRST respectfully requests oral argument on this application.

DATED: March 22, 2005

Respectfully submitted,

First, LLC,

By its attorneys,

A large, stylized handwritten signature in black ink, appearing to be 'Irwin B. Schwartz', is written over a horizontal line.

Irwin B. Schwartz BBO #548766

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